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Law

NONJUDICIAL PUNISHMENT

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This instruction implements AFD 51-2, *Military Justice*. It must be read with the Manual for Courts-Martial (MCM), United States, 1995 Edition, part V. It sets requirements for imposing nonjudicial punishment (NJP) on members of the Air Force and provides rules and procedures for imposing this punishment wherever the member is assigned. It implements Article 15, *Uniform Code of Military Justice* (UCMJ), and applies to all Air Force military personnel, including members of the US Air Force Reserve and the Air National Guard while in Federal service. This instruction is affected by the Privacy Act of 1974. Authority for issuance is Title 10, United States Code, Section 815 and MCM, United States, 1995 Edition, part V. Only a major command (MAJCOM) or Headquarters of the Air Force Reserve (HQ AFRES) can issue supplements to this instruction. Submit them in writing to AFLSA/JAJM, 112 Luke Avenue, Room 343, Bolling AFB, DC 20332-8000, for approval before publication.

SUMMARY OF REVISIONS

Creates a new requirement to report nonjudicial punishments imposed on senior officers as defined by AFI 90-301 (paragraph 1.4). Clarifies policy on imposing nonjudicial punishment and who may act on appeals in joint and unified commands (paragraphs 2.2. and 7.1). Deletes the SECAF designation requirement, permitting SAFOs to delegate NJP authority to their principal assistant (paragraph 2.3.3.). Provides examples of when a commander is a victim of an offense in his personal capacity versus his official capacity (paragraph 2.4.). New metrics are established (paragraph 3.2.). Withholds authority from commanders in the grade of Lieutenant Colonel and below to impose nonjudicial punishment on officers (Table 2.). When nonjudicial punishment is imposed on a member of the Air National Guard (ANG) who is TDY, coordination with the ANG commander is required (paragraph 4.2.). Recommends the commander consult with the servicing SJA in determining whether NJP is appropriate (paragraph 4.3.). Clarifies the procedures for notifying an accused of a change of commander and, if the initiating commander intends to forward the NJP to a superior commander, requires the accused be notified if the superior commander changes (paragraph 4.5.). The section on the right to consult legal counsel is clarified to address requests for individual military defense counsel (paragraph 4.7.1.). Provides examples of when the max-

imum exercise of nonjudicial punishment is warranted (paragraph 5.4.2.). Deletes paragraph 8.1. Requires a copy of the AF Form 3070, Record of Nonjudicial Punishment, be distributed to the unit UIF monitor and, in cases involving O-6 selects and above, requires a copy of the record and all supporting documents be forwarded IAW AFI 90-301 (paragraph 11.2.). Requires a copy of the record be sent to the command selection record group in all officer cases (paragraph 12.). A | indicates revisions from the previous editions.

1. General Guidance:

1.1. Purpose. NJP provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction. See MCM, part V, paragraphs 1b and 1e on the nature of NJP. Commanders should consider, where appropriate, nonpunitive disciplinary measures, such as counseling, administrative reprimands, and administrative withholding of privileges before resorting to NJP. However, such measures are not necessary before imposing NJP. MCM, part V, paragraph 1g.

1.2. Supervisory Authority. The officer exercising general court-martial jurisdiction supervises all NJP within the command, and arranges for a review of NJP actions for legal sufficiency by a judge advocate (see paragraph 11.4).

1.3. Air Force Cadets. For purposes of this instruction, the term "officer" includes cadets of the US Air Force Academy (USAF).

1.4. Reporting Senior Officer Cases. Advise commanders of their responsibility to report nonjudicial punishment actions on colonel selects and above to SAF/IGS (for general officers) or SAF/IGQ (for colonels and colonel selects) when initiated and when final action is complete in accordance with AFI 90-301. Provide commanders a copy of the completed AF Form 3070 with any attachments and supporting documentation for forwarding to SAF/IGS or SAF/IGQ.

2. Who May Impose Nonjudicial Punishment:

2.1. Commanders. Commanders who are commissioned officers may impose NJP on members of their commands for minor offenses. MCM, part V, paragraph 1e. As used here, "commanders" include:

- Commanders of Air Force units.
- The senior Air Force officer (SAFO) in a unified command, joint task force, combined task force, or activity outside the Air Force.
- The SAFO in a subordinate organization or element of a unified command, joint task force, combined task force, or activity outside the Air Force.
- Commanders of headquarters squadron sections, other squadron and element sections, and detachments who are appointed on special orders. MCM, part V, paragraph 2.

2.1.1. The term "members of their command" refers to the assigned members of the element or organization commanded and others on temporary duty (TDY) with, or otherwise attached to, the element or organization. A member need not be attached on TDY orders for the commander to exercise Article 15 authority if the commander exercises the usual responsibilities of command

over the member. In such a case, the commander has concurrent authority with the commander of the member's element or organization of permanent assignment.

2.2. NJP Authority in Joint or Unified Commands. The commander of a joint command, unified command, or joint task force is responsible for discipline in the command. The joint or unified commander should normally exercise disciplinary authority through the Air Force component commander or the SAFO to the extent practicable. The joint or unified commander may impose NJP on Air Force members of that command, regardless of the commander's parent service, unless such authority is withheld by a superior commander. The joint or unified commander will follow this instruction when imposing nonjudicial punishment on Air Force members. Matters that involve more than one service or that occur outside a military reservation but within the joint or unified commander's jurisdiction may be handled by the joint or unified commander, the Air Force component commander, or the SAFO, unless withheld by the joint or unified commander. Matters that involve only one service, and occurring on a military reservation or within the military jurisdiction of the Air Force, normally should be handled by the Air Force component commander or the SAFO, subject to this instruction. See Joint Publication 0-2, *Unified Action Armed Forces*. When NJP appears warranted, the joint commander coordinates with the SAFO or commander of the appropriate Air Force element before taking action. If the joint commander decides not to take action, but NJP still appears warranted, the SAFO or Air Force element commander takes action. If the joint commander decides to impose NJP, the SAFO or commander of the element immediately notifies the servicing Air Force staff judge advocate (SJA). See AFI 25-201, *Support Agreement Requirements*.

2.2.1. The servicing Air Force SJA:

- Coordinates with the SJA assigned to the joint force commander.
- Explains Air Force policy and NJP procedures.
- Advises the joint force SJA that Air Force regulations govern the administration and processing of NJP actions, including entries into the Automated Military Justice Analysis and Management System (AMJAMS) inputs, personnel and finance actions, Unfavorable Information File (UIF), and selection records. See Joint Publication 0-2.

2.3. Delegation of Authority. Within the limitations stated in paragraph 2.3.1., commanders who are general officers or who exercise general court-martial convening authority (GCMCA) may delegate their powers under Article 15 to a principal assistant. The principal assistant then assumes the commander's authority to impose NJP on members of the command (who are subordinate to the principal assistant). However, principal assistants may impose only the amount of punishment authorized for their grades. MCM, part V, paragraph 5b. Delegation of such authority must be in writing or incorporated in a permanent directive. The delegation should be addressed to the principal assistant by duty title, rather than by name, except as described in paragraph 2.3.2.. File the original written delegation or directive in the office of the SJA servicing the commander concerned. A delegation made by duty title continues in effect when a new principal assistant occupies the position or when command changes to a new commander, until expressly rescinded. A commander delegating nonjudicial punishment also retains the authority to administer nonjudicial punishment in his own right.

2.3.1. Commanders may delegate authority to the officer who would assume command in the event of the commander's death, disability, or absence, or to the vice commander of the organization. See AFI 51-604, *Appointment to, and Assumption of Command*. However, if that officer is

located at another station, the commander may delegate authority to the officer on the commander's station next eligible to assume command.

2.3.2. Commanders who are general officers or who exercise GCMCA and whose commands include personnel of other services may delegate their authority to impose NJP to the senior principal assistant of the offender's service without regard to the limitations of paragraph 2.3.1.

2.3.3. SAFOs in a unified command, joint task force, combined task force, or activity outside the Air Force, or in a subordinate organization or element of a unified command, joint task force, combined task force, or activity outside the Air Force, who are general officers, may delegate their powers under Article 15 to the next senior Air Force officer or another principal assistant.

2.4. Commander as Victim. If a commander is the victim of a crime in his or her personal (e.g. victim of assault or larceny) as opposed to official (e.g. violation of commander's order) capacity, that commander should forward the report of the incident to the next higher commander for review and appropriate action.

2.5. Air Force Cadets. Only the Commandant of Cadets or a superior commander at the USAFA may impose NJP on USAFA cadets.

2.6. Withholding Authority. A commander at any echelon may withhold from any subordinate commander all or part of the authority -- including the authority to impose NJP for specific types of offenses -- that the subordinate would otherwise have under the UCMJ, MCM, or this instruction. When authority is withheld, the withholding should be in writing, or incorporated into a permanent directive, clearly setting out the specific authority withheld. File the original of the letter or directive in the office of the SJA servicing the commander withholding the authority. File a copy in the office of the SJA servicing the commander whose authority has been withheld. The withholding remains in effect when a new commander assumes either position, until expressly revoked. The withhold action should be addressed by duty title and not by name.

3. Responsibilities of the Commander:

3.1. General Responsibilities. Commanders who initiate Article 15 action and impose punishment act on the basis of information that they determine to be reliable. See MCM, part V, paragraph 4c(3), on evidence. The commander's action must be temperate, well-conceived, just, and conducive to good order and discipline. Although it is the SJA's responsibility to advise and help the commander to evaluate the facts and determine what offense was committed, if any, it is the commander who makes the decision to impose punishment and the degree of punishment.

3.2. Timeliness of Actions. Offer NJP to offenders as soon as possible after they commit an offense for maximum disciplinary and rehabilitative effect. Commanders should offer NJP within 10 days of the Case-Ready Date, or be able to explain why this was not appropriate. The impartial and timely administration of military justice helps sustain good order and discipline. SJAs and chiefs of military justice should regularly analyze the available AMJAMS data relating to each segment of NJP processing over which they have significant control to determine specific areas for improvement and implement appropriate management measures to maximize effectiveness and efficiency. Failure to meet this processing goal, for whatever reason, does not preclude the commander from initiating NJP proceedings at a later date. The following Air Force NJP metrics have been established to assist in expediting the administration of justice.

3.2.1. Offer 90% of all NJP actions within 10 days of the Case-Ready Date. See **Attachment 5** for definition of Case-Ready Date.

3.2.2. Complete 80% of all NJP actions (Offer Date through Servicing SJA Review Date) within 20 days.

3.3. Standard of Proof. While no specific standard of proof applies to any phase of Article 15 proceedings, the commander should recognize that the alleged offender is entitled to demand trial by court-martial, in which case proof beyond a reasonable doubt by competent evidence is prerequisite to conviction and punishment. Therefore, the commander must consider whether such proof is available before initiating action under Article 15. If such proof is lacking, action under Article 15 is usually not warranted.

3.4. Providing Evidence to the Member. After the commander serves AF Form 3070, members have a right to examine all statements and evidence available to the commander, unless privileged or restricted by law, regulation, or instruction.

4. Imposing Punishment:

4.1. Initial Considerations. After making a preliminary inquiry, the commander consults with the servicing SJA to determine whether NJP is appropriate under the circumstances and, if so, whether the commander should initiate proceedings personally or refer the matter to a superior commander for action. Such referral is appropriate when the commander cannot impose an appropriate punishment because of the alleged offender's grade. See **Table 1.** and 2.

Table 1. Enlisted Punishments.

Punishment	Imposed by Lt or Capt	Imposed by Major	Imposed by Lt Col or Above
Additional Restrictions	May not Impose NJP on CMSgt or SMSgt	May not Impose NJP on CMSgt or SMSgt	See Note 2 for reduction of CMSgt or SMSgt
Correctional Custody	Up to 7 days	30 days	30 days
Reduction	CMSgt - No SMSgt - No MSgt - No TSgt - No SSgt - One Grade Sgt - One Grade SrA - One Grade A1C - One Grade Amn - to AB	CMSgt - No SMSgt - No MSgt - No TSgt - One Grade SSgt - One Grade Sgt - One Grade SrA - to AB A1C - to AB Amn - to AB	CMSgt - Note 2 SMSgt - Note 2 MSgt - One Grade TSgt - One Grade SSgt - One Grade Sgt - One Grade SrA - to AB A1C - to AB Amn - to AB
Forfeiture	7 days pay	1/2 of 1 month's pay per month for 2 months	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes	Yes
Restriction	14 days	60 days	60 days
Extra Duties	14 days	45 days	45 days

NOTES:

1. See MCM, part V, paragraph 5d for further limitations on combinations of punishments.

2. CMSgt or SMSgt may be reduced one grade only by MAJCOM commanders, CINCs, or commanders to whom promotion authority has been delegated. See AFI 36-2502, *Promotion of Airmen*.
3. Bread and water and diminished rations punishments are not authorized.
4. Frocked commanders may exercise only that authority associated with their actual pay grade. No authority is conferred by the frocked grade.

Table 2. Officer Punishments.

Punishment	Imposed by Colonel	Imposed by GCMCA or General Officer
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	1/2 of 1 month's pay per month for 2 months
Reprimand	Yes	Yes
Arrest in Quarters	No	30 days
Restriction	30 days	60 days
Extra Duties	No	No

NOTES:

1. Officers in the grade of Lieutenant Colonel and below (includes frocked Colonels) may not impose NJP on an officer.
2. Only MAJCOM commanders, unified CINCs, and their equivalents, or higher may impose NJP on general officers.
3. See MCM, part V, paragraph 5d for further limitations on combinations of punishments.

4.2. Alleged Offenders Attached to the Command. In some cases, commanders initiate NJP proceedings against members who are in their commands by virtue of being TDY or otherwise attached to the commander's organization. In these cases, the commander should confer whenever possible with the member's parent organization commander about whether NJP should be offered by the TDY commander or the parent organization commander. If the TDY commander is going to initiate NJP, also confer with the parent organization commander about the member's background, past duty performance, and other relevant factors before initiating the action. Where the alleged offender is a member of an Air Force Reserve unit or a member of an ANG unit, prior coordination is required.

4.3. Description of Offense. Commanders should consult with the servicing SJA in deciding whether to initiate NJP. The SJA should advise the commander how to properly describe each offense to state a violation of the UCMJ. The language describing the alleged offense should follow the form of specifications in MCM, part IV. However, the action remains valid even if the specification fails to include all the elements of an offense, provided the alleged offender is reasonably informed of the nature of the alleged misconduct. The legal office provides the language describing the offense on AF Form 3070, except where it is impractical. Computerized forms authorized by AFLSA/JAJM may be used. The legal office requests an Automated Military Justice Analysis and Management System

(AMJAMS) Report on Individual Personnel (RIP) from the orderly room or servicing Military Personnel Flight (MPF), unless the same information is already available. See **Attachment 1**.

4.4. Notifying the Alleged Offenders:

4.4.1. Commanders initiating NJP proceedings notify the alleged offenders and advise them of their rights using AF Form 3070. Provide the alleged offender with a copy of all three pages of the AF Form 3070. If the commander refers the matter to a superior commander who can receive the member personally, the superior commander gives the notification. MCM, part V, paragraph 4a.

4.4.2. Where it is not practical for the alleged offender to appear personally before the superior commander due to distance, the superior commander's unavailability, or any other reason, then the subordinate commander personally serves the alleged offender with AF Form 3070, notifying and advising that individual of his or her rights. The alleged offender appears personally before the subordinate commander, and the subordinate commander prepares a memorandum summarizing the presentation.

4.4.3. If the commander recommends proceedings by a superior commander, but decides to dispose of the case personally before sending the form to the superior commander, the commander must withdraw the form and reinitiate the action using a new AF Form 3070. The alleged offender then has a new opportunity to accept NJP proceedings, or demand trial by court-martial. The new AF Form 3070 reflects the new date of service. Explain the discrepancy in the "Remarks" section of the RIP. See **Attachment 1**

4.5. Changing Commanders before NJP Proceedings are Complete. The imposition of nonjudicial punishment is principally a disciplinary matter between the alleged offender and the commander. Therefore, the alleged offender should be informed of the identity of the commander who will determine whether an offense has been committed and the punishment, if appropriate, before the alleged offender makes the decision whether to accept nonjudicial punishment. If a new commander assumes responsibility for the case after the alleged offender was offered NJP proceedings, but before the action is completed, inform the alleged offender of the identity of the new commander. If the alleged offender has already accepted NJP proceedings, give the alleged offender another opportunity to accept NJP proceedings, or to demand trial by court-martial. The new commander accomplishes this in one of two ways:

- Reinitiates the action on a new AF Form 3070, after first withdrawing the old AF Form 3070.
- Notifies the alleged offender in writing of the change in commanders responsible for the Article 15 action and of that individual's right to accept NJP proceedings, or demand trial by court-martial. Attach the notification to the original AF Form 3070. See **Attachment 2**.

4.5.1. After a commander notifies an alleged offender that he or she intends to recommend that a superior commander impose NJP, a change of superior commander also gives the alleged offender a new opportunity to accept or reject NJP proceedings. The subordinate commander follows the procedures set forth in paragraph **4.5**.

4.6. Discovery of Additional Offenses. When evidence of an additional offense comes to light after a commander initiated Article 15 action, but before the member is notified of the punishment, the commander may:

- Withdraw the initial form and reinitiate NJP for all offenses. If the form has been sent to a superior commander, do this only with the superior's agreement.

- Offer a second Article 15 for the additional offense.

4.7. Time Limitation for the Alleged Offender's Decision. The alleged offender has 3 duty days (72 hours) to reply after the commander notifies the member of intent to impose nonjudicial punishment. Weekends and holidays are included in the 3 days if they are normally scheduled duty days for the member. The initiating commander may grant an extension for good cause at the member's written request.

4.7.1. The commander will encourage the alleged offender to take full advantage of this time to consult with legal counsel, to decide whether to accept NJP proceedings, and if so, to prepare matters in defense, extenuation, or mitigation. The right to legal counsel does not include the right to request individual military defense counsel as defined in RCM 506(b)(1) and AFI 51-201, paragraph 5.3. If the alleged offender asserts an attorney-client relationship in regard to the same matter as the offense for which the alleged offender is being offered nonjudicial punishment with a military defense counsel other than the detailed military defense counsel, process the request for this other military defense counsel under the provisions of AFI 51-202, paragraph 5.3, et seq., regarding individual military defense counsel.

4.7.2. If an alleged offender does not reply in time, the commander may continue with the proceedings and note in Block 6 of AF Form 3070 that the individual failed to respond. If the commander has reason to believe the alleged offender failed to respond for reasons beyond that individual's control, the commander may not proceed with Article 15 action.

4.8. Alleged Offender's Presentation. See MCM, part V, paragraph 4c. Except under extraordinary circumstances or when the imposing commander is unavailable, the alleged offender is entitled to appear personally before the commander imposing the punishment to present matters in defense, mitigation, or extenuation. MCM, part V, paragraph 4c(1). If the member and commander are not collocated, follow the procedure in paragraph 4.4.2.

4.8.1. The commander may open the personal appearance to the public, even though the alleged offender does not request it and does not agree.

4.9. Commander's Findings. Acceptance of NJP proceedings is a choice of forum, not a plea of guilty to the offenses. Accordingly, the commander carefully considers all matters submitted in defense, mitigation, or extenuation by the alleged offender. After such consideration, the commander indicates in Block 6 of AF Form 3070, one of the following:

- The alleged offender did not commit the offenses alleged, and that the proceedings are terminated.
- In light of matters in extenuation and mitigation, NJP is not appropriate, and that the proceedings are terminated.
- The alleged offender committed one or more of the offenses alleged. The commander lines out and initials any offenses the commander determines were not committed.
- The alleged offender committed one or more lesser included offenses, rather than the offenses listed. The commander consults with the SJA before changing an offense to a lesser included one.

4.9.1. If the proceedings involve a waiver of the statute of limitations, the alleged offender must sign a written waiver which becomes an attachment to AF Form 3070. See MCM, part V, paragraph 1f(4).

4.9.2. If the commander terminates the proceedings, the original AF Form 3070 is sent to the servicing SJA to be recorded in AMJAMS and then destroyed.

5. Rules for Imposing and Administering Punishments:

5.1. General Requirements. Except where impracticable due to military exigencies, the commander must consult the servicing SJA before imposing punishment. The commander determines the appropriate punishment after reviewing all matters submitted in defense, mitigation, or extenuation. All punishments take effect immediately upon notification to the offender, except any portions suspended by the commander. MCM, part V, paragraph 5g.

5.2. Maximizing the Impact of Punishment. Whenever possible, the commander should impose nonjudicial punishment personally on the offender.

5.3. Officer and Noncommissioned Officer (NCO) Selection Record Determination. When the offender is an officer or a senior NCO, the commander decides at the time he or she imposes punishment whether to file the record of NJP in the offender's selection record. When the commander imposes punishment, serve the offender with a decision letter. See AFI 36-2608, *Military Personnel Records Systems*, for formats and procedures. Send the final decision letter to the servicing SJA with the Article 15. The SJA forwards the decision letter with the Article 15 to the review authority.

5.4. Permissible Punishments. Tables 1 and 2 set out permissible punishments, based on the grade of the offender at the time the commander imposes punishment, and on the grade and status of the commander.

5.4.1. The commander may impose the maximum authorized punishment in a single case, subject to the limitations in MCM, part V, paragraph 5d.

5.4.2. While not prohibited by law, commanders should impose an unsuspended reduction in grade, along with forfeiture of pay, only when the maximum exercise of Article 15 authority is warranted (e.g. repeat offender, most serious offenses, past rehabilitative efforts have failed, or recalcitrant offender).

5.5. Punishment Formats. See Attachment 3.

6. Action When the Alleged Offender Demands the Right to Trial by Court-Martial:

6.1. Restrictions. When the alleged offender demands trial by court-martial, the commander may not impose punishment under Article 15.

6.2. Commander's Options. The commander is not required to prefer court-martial charges. However, if the commander does prefer charges, he or she is not limited to the charges originally included in the notification to the alleged offender. The commander may change the form of the charges to meet the requirements of the law or proof and add new charges, whether or not they were known at the start of Article 15 proceedings.

6.3. Once a request for trial is made, the alleged offender may withdraw it only with the commander's approval.

7. Appeals of Nonjudicial Punishment. See MCM, part V, paragraph 7a, for general guidance on appeals.

7.1. Except as otherwise designated by AFLSA/JAJM, the "next superior authority" is:

7.1.1. The immediate Air Force commander superior to the officer who imposed the punishment.

7.1.2. The immediate Air Force commander superior to the commander who delegated power to a principal assistant to impose the punishment. Appeals from punishment imposed by a squadron section commander do not go to the squadron commander, but to the squadron commander's superior commander. In a joint or unified command, joint task force, combined task force, or other activity outside the Air Force, appeals from punishment imposed by the element section commander go to the element commander.

7.1.3. In the case of a punishment imposed by:

- The SAFO or commander of an Air Force element in a joint or unified command, joint task force, combined task force, or other activity outside the Air Force; or,
- The SAFO in a subordinate organization or element of a unified command, joint task force, combined task force, or other activity outside the Air Force, or their delegates; then

The next superior authority is the next level SAFO or commander of an element in the joint command or joint task force, if any; or, the general court-martial convening authority for the Air Force unit responsible for support under AFI 25-201. The Air Force officer who acts on the appeal may not be junior in grade to the officer who imposed the punishment. In the case of punishment imposed by an Air Force component commander of a joint command, or where the next superior authority as defined above is junior in grade to the commander who imposed the punishment, follow the procedure set forth in paragraph 7.1.5.

7.1.4. In the case of punishment imposed by a joint commander of another service, the "next superior authority" is the next superior joint commander. See paragraph 2.2. When the punishment is imposed by the CINC of a different service of a combatant command send the appeal to the Chairman of the Joint Chiefs of Staff for appropriate action. See Joint Publication 0-2. The SAFO or commander of the offender's element notifies the servicing Air Force SJA of the appeal. The servicing SJA coordinates with the SJA who services the appellate authority to explain Air Force policy and procedures for NJP, and to advise the appellate authority's SJA specifically that Air Force channels will handle collateral decisions and processing (such as AMJAMS inputs, personnel and finance actions, and UIF and selection records entries).

7.1.5. In the case of an appeal from punishment imposed by the commander of a MAJCOM, direct reporting unit, field operating agency, or the Air Force commander of a joint or unified command, SECAF has designated AF/CC as the appellate authority and authorized AF/CC to delegate this authority to AF/CV. Forward the appeal to AFLSA/JAJM for appropriate action.

7.2. Format. The member is not entitled to a personal appearance before the appellate authority. See MCM, part V, paragraph 7c.

7.3. Delegation of Authority. If the "next superior authority" is a general officer or an officer who exercises GCM jurisdiction, that individual may delegate the power to act on appeals to a principal assistant in the manner described in paragraph 2.3.1.

7.4. Procedures for Appeals:

7.4.1. Punishment is not stayed pending appeal, except as provided in MCM, part V, paragraph 7d.

7.4.2. At the time commanders inform offenders of the punishment, the commander:

- Directs offenders to acknowledge receipt of the punishment.
- Informs them that appeals must be filed within 5 calendar days.
- Explains that offenders waive their rights of appeal if they fail to file within 5 days.
- Explains that, if offenders do appeal, they must submit any supporting documents they wish to present within the 5-day period. For good cause, the commander may grant an extension of time to appeal, upon written application of the offender or the offender's counsel received within the 5-day appeal period. A decision not to appeal or to withdraw an appeal is final.

7.4.3. The offender is entitled to the advice of counsel in deciding whether to appeal and in preparing and submitting any written materials to support the appeal.

7.4.4. If the offender refuses to acknowledge receipt of the punishment, it is not considered an appeal. The commander notes refusal on the form, then sends the action through the servicing SJA, as with any case where there is no appeal.

7.4.5. The servicing SJA should continue processing the action during the appeal period. If an appeal is granted, notice can be provided at that point, on corrected forms, to rescind or modify finance or personnel actions.

7.4.6. An offender who submits written material in support of the appeal presents it to the commander who initiated the Article 15 action. Upon receiving the member's written materials:

- The initiating commander examines the written materials submitted by the offender. After consulting with the SJA, the commander may grant the relief requested, if appropriate, by using his or her powers to suspend, mitigate, remit, or set aside the punishment (see paragraph 8.). If the commander grants full relief, don't forward the appeal. If the commander grants less than the full relief requested, send the appeal to the appellate authority.
- If the appeal is sent, the commander adds written comments by indorsement through the servicing SJA (see MCM, part V, paragraph 7e) addressing each contention raised by the offender unless the contentions are clearly answered in the supporting documentation. The commander states in the forwarding indorsement whether the offender has served any portion of the punishment.

7.4.7. The commander includes in the package, but not as an attachment to the record, all written materials considered in imposing the punishment, including a summary of the member's oral presentation, if applicable. Include a summary of any other information considered and its source.

7.4.8. The officer considering the appeal reviews the written material. This material does not become part of the permanent record. Instead, return it to the SJA for filing.

7.5. Action by Superior Authority. Unless otherwise stated, any relief granted as a result of an appeal is effective from the date the punishment was initially imposed. See MCM, part V, paragraph 7f(1).

8. Suspension, Mitigation, Remission, and Set Aside of Punishment. A commander may suspend punishment at the time of imposition or afterwards. For actions taken after initial imposition of punishment, use AF Form 3212, **Record of Supplementary Action Under Article 15, UCMJ.**

8.1. A commander may not set aside punishment more than 4 months after execution of the punishment, unless unusual circumstances exist and are explained by the commander on an attachment to AF Form 3212.

8.1.1. Before starting any action to suspend, mitigate, remit, or set aside a previously imposed punishment, the commander must consult the servicing SJA.

8.2. Action by Successor in Command. A commander's power to suspend, mitigate, remit, or set aside NJP passes to his or her successor in command. For these purposes, the successor in command may be either:

- The officer who has succeeded to the command or the position of the officer who imposed the punishment and who is authorized to impose on the offender the punishment involved.
- An officer authorized to impose on the offender the punishment involved, if the offender has been reassigned. If the successor lacks authority, that officer forwards the member's request to the next superior commander. MCM, part V, paragraph 7f(1).

8.3. Suspension. See MCM, part V, paragraph 6. To suspend punishment is to postpone application of all or part of it for a specific probationary period, until a specified date, with the understanding that it will be automatically remitted (canceled) at the end of that period, if the offender does not engage in further misconduct. Suspension is often warranted for a first offender, or when there are persuasive extenuating or mitigating circumstances. For rules on suspensions of forfeitures and reductions, see MCM, part V, paragraph 6a(1), and Article 15(d), UCMJ.

8.3.1. When reduction in grade is later suspended, the offender's original date of rank (DOR), held before the reduction, is reinstated. The effective date of rank, however, is the date of the letter directing the suspension. See AFI 36-2604, *Service Dates and Dates of Rank* (formerly AFR 35-3).

8.3.2. Suspensions are Limited to Six Months. See MCM, part V, paragraph 6a(2). Six months may be longer than 180 days; for example, 1 July punishment suspended to 31 December.

8.4. Mitigation. See MCM, part V, paragraphs 6b, and 6b(1-4), and Article 15(d)(1-4), UCMJ.

8.4.1. Restraints on liberty (such as correctional custody) may not be mitigated to forfeitures.

8.4.2. For reduction in grade, see MCM, part V, paragraph 6b. If the reduction was executed, the DOR for the restored grade is the date of the indorsement mitigating the punishment. For example, if an offender receives Article 15 punishment on 1 June, consisting of a reduction in grade, and the commander subsequently (on 1 July) mitigates the reduction to a forfeiture, both the effective date and DOR for the restored grade is 1 July. See AFI 36-2604.

8.5. Remission. See MCM, part V, paragraph 6c.

8.6. Set Aside. See MCM, part V, paragraph 6d.

8.6.1. Set aside action is not normally considered a rehabilitation tool, like suspension, remission, and mitigation. Commanders should not routinely set aside punishment. The commander exercises this discretionary authority only in the unusual case where there is a question concerning the guilt of the offender, or in those rare cases where it is in the best interests of the Air Force to clear the member's record.

8.6.2. Setting aside a punishment in its entirety restores the offender to the position held before the punishment, as if the Article 15 action had never been initiated. For example, if a member has been reduced in rank through Article 15 punishment, and the reduction is later set aside, the effective date and DOR for the restored rank reverts to that held before reduction. See AFI 36-2604.

8.7. Limitations on Suspension, Mitigation, Remission, and Set Aside of Punishment. A commander cannot suspend, mitigate, remit, or set aside punishment under Article 15 unless the commander had the authority to impose that punishment. For example, a commander in the grade of captain or lieutenant cannot suspend, mitigate, remit, or set aside punishment imposed by a field grade commander, if the punishment is beyond what the captain or lieutenant can impose. In this event, the immediate commander should recommend suspending, mitigating, remitting, or setting aside the action to the next superior commander who is empowered to impose such a punishment.

8.8. Process and file all requests to suspend, mitigate, remit, or set aside punishment, and any actions taken in response, with the original Article 15 record and with other official file copies.

9. Vacation of Suspension. See MCM, part V, paragraph 6a(5):

9.1. Notification of the Alleged Offender. Except when prevented by unauthorized absence of the alleged offender, the commander notifies and advises that individual of his or her rights, using AF Form 366, **Record of Proceedings of Vacation of Suspended Nonjudicial Punishment**. The servicing SJA provides a description of the offense and other information pertinent to the suspended punishment on AF Form 366.

9.2. Timing. To vacate a suspension, the commander must present the offender with AF Form 366 before the end of the suspension period. The suspension period is stayed if the probationer has been properly notified via AF Form 366 during the suspension period. *Note: The offender's unauthorized absence also interrupts the suspension period. For example, if a member is absent without leave for 10 days, the period of suspension is extended 10 days.*

9.3. Effect on Suspended Reductions. If a reduction in grade is suspended, but the suspension is later vacated, the DOR in the grade to which the member is reduced is the date of the original reduction indorsement or letter. The effective date, however, is the date of the vacation action. See AFI 36-2604. For example, if a member receives Article 15 punishment on 1 June, consisting of a suspended reduction in grade for 6 months, and the commander subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the offender's new DOR is 1 June. Pay is not taken retroactively.

10. Indorsing Forms and Correspondence:

10.1. Any indorsements to AF Form 3070 are prepared using normal correspondence principles. Send the correspondence involved in processing NJP (including prescribed forms) through channels, except as provided in paragraph 12. Unless specifically prescribed, each intermediate commander can decide whether to add matters of substance by indorsement. If so, they are signed as noted below.

10.2. Content of Indorsements:

10.2.1. If the document is moving upward in the chain of command, the intermediate commander or delegatee may recommend action or provide other information that might help the superior commander to make a decision.

10.2.2. If the document is moving downward, the intermediate commander, delegate, or a staff officer signing under the authority line may furnish information (including administrative instructions) to the alleged offender or to a subordinate commander by indorsement.

10.3. Copies. Each copy of Article 15 correspondence is signed, carbon copied with signatures and initials, or reproduced from the signed original. The SJA determines the number of copies needed to provide one to the alleged offender and to each level of command.

11. Action Taken on Records of Punishments, Including Vacation, Suspension, Mitigation, Remission, or Set Aside Actions:

11.1. Action by the Commander. The commander who imposed the punishment or who took the vacation, suspension, mitigation, remission, or set aside action, sends the record to the servicing SJA.

11.1.1. If the punishment includes unsuspended correctional custody, the commander immediately notifies the correctional custody monitor of the details, including inclusive dates, to begin the punishment. See paragraph 11.2.

11.1.2. Before sending the record to the servicing SJA, but after completing all other action, including appeal, the commander makes a preliminary indication on AF Form 3070 whether officer intends to file the Article 15 in the offender's UIF. See AFI 36-2907, *Air Force Unfavorable Information File Program* (formerly AFR 35-32). In a joint command, if the Article 15 was imposed on an Air Force member by a commander of a different service, the decision whether to establish a UIF is made by the SAFO or commander of the Air Force element of the joint command. If the SAFO or commander of the element is unavailable, or is not senior to the commander who imposed NJP, a GCMCA of the Air Force host command (see AFI 25-201) who is senior to that commander decides whether to establish a UIF. If there is not a GCMCA in that command who is senior to the commander who imposed the punishment, any senior Air Force GCMCA, designated by AFLSA/JAJM, decides.

11.1.3. The decision to file in a UIF does not apply to Reservists, unless they are on extended active duty when they received nonjudicial punishment.

11.2. Action by the Servicing SJA. The SJA or designated attorney performs a legal sufficiency review if there is no appeal, or after the offender acknowledges action on the appeal and the immediate commander returns the record to the servicing SJA. The action is considered final at that point. This is final action for the timeliness metric as recorded in AMJAMS also. The SJA then sends:

- A signed copy of the record to the officer who supervises the correctional custody program when the case involves unsuspended correctional custody.
- Two copies of the record with AF Form 1373, **MPO Document Control Log-Transmittal**, to the Accounting and Finance Office (AFO) if the punishment affects the member's pay. The SJA keeps a copy of the AF Form 1373.
- One copy to the unit UIF monitor, if the record will be filed in a UIF.
- A signed copy of the record to the servicing MPF with two copies of the AF Form 1373 in all cases.
- The original record (and two complete copies for officer cases) directly to the SJA of the officer exercising general court-martial convening authority, after sending the record to the

MPF and AFO and noting the date they received the record. File the receipted copy of AF Form 1373 as prescribed in paragraph 14.3.

- In cases involving O-6 selects and above, one copy of the record and all supporting documents to the offender's commander for forwarding IAW AFI 90-301.

11.2.1. In all cases, the servicing SJA of the initiating command processes Article 15 input forms for the AMJAMS. See AFM 111-651, *Automated Military Justice Analysis and Management System (AMJAMS)*.

11.2.2. Note that, although all punishments become effective upon notification, the practical effect of paragraph 11. is that the administrative initiation of pay collection is delayed while an appeal is pending. Timely processing of an appeal is essential for this reason, as well as for fairness.

11.3. Action by MPF. The MPF, on receiving the record:

- Acknowledges receipt on a copy of AF Form 1373 and returns it to the servicing SJA.
- Updates the member's master computer record, records time not creditable for award of the Air Force Good Conduct Medal, and files the record of punishment in the member's UIF, if appropriate. See AFI 36-2907 for detailed procedures.

11.4. Action by GCMCA SJA. The officer who has general court-martial convening authority arranges for an administrative supervisory review by a judge advocate. The judge advocate performing the review returns legally deficient forms for correction.

12. Filing Original. The GCMCA SJA sends the original copy to one of these addresses to file in the master personnel record group:

- For cases involving enlisted members or officers below the grade of colonel, send record to AFPC/DPSRI1, 550 C Street West, Suite 21, Randolph AFB TX 78150-4723.
- For cases involving USAFA cadets, send to HQ USAFA/DPY, 2304 Cadet Drive, USAF Academy CO 80840-5000, for inclusion in section 3 of the CPR-1. Upon commissioning, these records will be forwarded to the officer master personnel record group, AFPC/DPSRI1, 550 C Street West, Suite 21, Randolph AFB, TX 78150-4723.
- For cases involving colonels, send to HQ USAF/DPOB, 1040 Air Force Pentagon, Washington, DC 20330-1040.
- For cases involving general officers, send to AFGOMO, 1040 Air Force Pentagon, Washington, DC 20330-1040.
- In officer cases, send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant from another MAJCOM, send a copy to that MAJCOM's SJA.
- For records of nonextended active duty reservists below the grade of colonel, send the original to ARPC/DSM, 6760 East Irvington PL #4000, Denver CO. 80280-4000. For colonels and generals, send the original to HQ USAF/REPS, 1420 Air Force Pentagon, Washington, DC 20330-1420.

13. Effect of Errors. The rule in MCM, part V, paragraph 1h also applies to this instruction.

14. Disposition of Records:

14.1. Governing Directive. The disposition of records of nonjudicial punishment is governed by AFMAN 37-139, *Records Disposition--Standards*.

14.2. Contents of Record. The record of punishment consists of:

- AF Forms 366, 3070, or 3212, with any indorsements and attachments for punishment or statement of offenses.
- Decision letter under AFI 36-2608.

14.3. Supporting Documentation. Evidence and other written materials considered as a basis for imposing punishment, or vacating a suspended punishment, or submitted by the offender in mitigation, extenuation, or defense or on appeal are not part of the record. File such evidence and other written materials at the office of the servicing SJA of the commander who initiated the Article 15 as attachments to that office's copy of the action. The material may be destroyed after 3 years at the SJA's discretion.

14.4. Send a copy of the RIP (although not part of the record) to the servicing GCMCA SJA for AMJAMS purposes only.

BRYAN G. HAWLEY, Maj General, USAF
The Judge Advocate General

Attachment 1

SAMPLE OF COMPLETED REPORT ON INDIVIDUAL PERSONNEL (RIP)

Prepared 93 Aug 16 01:54. As of 93 Aug 16 PCN N130070 WG WGWEFX2G

Grade: TSGT	Name: Doe, Jane L.	SSN: 123-45-6789
Unit: US Air Force	HQ DET QMJ1	
Base: Washington 01	CTY DC 23044	NR-DEPS: 00
DOB: 68 Sep 17	MARTL-STAT: Married	TAFMSD: 87 Aug 11
DOR: 90 Mar 01	PAY-DT: 88 May 03	DEROS:
DOE: 90 Aug 23	ETH-GP None	RACE: CAU
Sex: FEM	High School Compl: Dipl	***AQE SCORES***
High Education Compl:		Admin-79
		Elect-60
PAFSC: xxxx		Genrl-85
DAFSC: xxxx		Mech-70

Duty Title: Asst NCOIC Mil Justice Div

Prof Mil Education ***SECURITY CLNCE***

COURSE YRCOMPL SECRET

Decorations** Awards*** ***Combat Svc***

OU, AFTR

UNFAVORABLE INFO FILE: NO

Instructions: Use bond paper for item continuations. Label each item exactly as on this form.

Pay per month: \$632.00* (See Note 1)

Home of record ZIP Code: 47710

APR/OER Average: (Not required)

Date Assigned Unit: 1 May 85

AFQT Score: (Not required)

*****Previous Article 15 Action*****

Date	Offense	Punishment
(See Note 2)		

*****Previous Courts-Martial*****

Date	Type	Offense	Punishment
(See Note 3)			

*****Remarks***** (See Note 4)

PCN N130070 WG KY-X2G AMJAMS End Page

NOTES:

1. Items not printed by the computer must be filled in from the individual's personnel files.
2. If no previous Article 15, write "none."
3. If no previous courts-martial, write "none."
4. Include any pertinent information not otherwise covered. If there is any record of civil court convictions, describe the offense, jurisdiction, sentence, and date of conviction.

Attachment 2

FORMAT FOR NOTIFICATION OF CHANGE OF COMMANDER

DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 12TH CIVIL ENGINEERING SQUADRON (AETC)

RANDOLPH AIR FORCE BASE, TEXAS 78150-4513

MEMORANDUM FOR SRA STEPHEN HAWKING (Date)

FROM: 12 CES/CC

1651 5th Street W.

Randolph AFB TX 78150-4513

SUBJECT: Change of Commander for Nonjudicial Punishment Proceedings

1. On 15 January 1993, my predecessor in command notified you of (his/her) intent to impose nonjudicial punishment under Article 15, UCMJ, upon you for the offense(s) of _____ . This is to inform you that as the successor in command, I will be the commander who decides whether to impose the punishment, and if so, its terms.

2. On 18 January 1993, you chose to accept nonjudicial punishment for this offense (these offenses) and to waive your right to trial by court-martial. I am hereby giving you the opportunity once again to decide whether you will accept nonjudicial punishment proceedings or demand trial by court-martial. Indicate your choice below. (See Note)

3. Acknowledge receipt of this letter by signing the indorsement below and returning this document within 3 duty days.

EDWARD R. JOHNSON, Colonel, USAF

Commander

1st Ind, SrA Hawking

To: 12 CES/CC

Receipt acknowledged.

(Check applicable box)

a. ☐ I demand trial by court-martial.

b. ☐ I waive my right to demand trial by court-martial and accept nonjudicial punishment proceedings under Article 15, UCMJ.

STEPHEN HAWKING, SrA, USAF

NOTE: Use this paragraph only if offender has already waived right to demand trial.

Attachment 3

FORMAT OF NONJUDICIAL PUNISHMENTS

The following are examples of punishment language which may be inserted in AF Form 3070 block 6:

1. _____ days correctional custody.

2. Reduction to the grade of _____, with new date of rank of _____.¹

3. Forfeiture of \$ _____ pay. [If 1 month]

Forfeiture of \$ _____ pay per month for 2 months.

4. Reprimand. No special language is required. The reprimand may be placed on the form or on an attachment.

5. Arrest in quarters for _____ days.

6. Restriction to ~~_____ state the area _____~~ for _____ days.

7. _____ days extra duty.

Or, if the above punishment should be suspended:

_____ suspended until _____ (provide date) _____, after which time it will be remitted without further action, unless sooner vacated.

¹If the reduction in grade is suspended, no new date of rank is established.

Attachment 4

**FORMAT FOR REQUEST FOR SUSPENSION, MITIGATION, REMISSION, OR SET ASIDE
OF NONJUDICIAL PUNISHMENT**

DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 96TH SUPPORT GROUP (ACC)

DYESS AIR FORCE BASE, TEXAS 92510-5000

MEMORANDUM FOR 96 SG/CC (see note 1) (Date)

FROM: Sgt Jane J. Doe

SUBJECT: _____ of Nonjudicial Punishment (see note 2)

1. On 15 June 1993, the Commander, 96th Support Group, imposed nonjudicial punishment upon me, consisting of (reduction to the grade of sergeant and restriction to the limits of Dyess Air Force Base for 30 days). (No part of the punishment) (The portion of the punishment relating to _____ was suspended).

2. I request (all the punishment) (the unserved portion of the punishment) (the unserved portion of the punishment relating to (reduction) [_____]) be suspended.

or

2. I request that (all the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to reduction) (_____) be mitigated to (a forfeiture of (\$xxx.xx) (_____)).

or

2. I request that (all the punishment) (the unserved portion of the punishment) (_____) be remitted (effective _____ 1993).

or

2. I request that the nonjudicial punishment action be set aside.

3. My reasons for requesting this action are (as follows:) (attached.)

JANE J. DOE, Sgt, USAF

X Atch (see note 3)

NOTES

1. Use through address to send through intermediate channels, if necessary.
2. Insert "Suspension," "Mitigation," "Remission," or "Set Aside" as appropriate.
3. Indicate any attachments. If this letter is sent to headquarters off-base where punishment was imposed, add as an attachment the AF Form 3070, and any other pertinent information which may assist in making a decision.

Attachment 5

DETERMINING THE "CASE-READY DATE"

The following dates may be used as the case-ready date:

1. Date commander is provided the completed report of investigation (ROI) (e.g. OSI, SP, IG, Social Actions, commander-directed inquiries/investigations, or civilian police reports).
2. Date commander receives positive urinalysis notification or the date of No. 1 above, whichever is later.
3. Date commander notified of financial misconduct (e.g. American Express charge card abuse, bad checks, failure to pay a just debt) or, date of No. 1 above or date of No. 4 below, whichever is later.
4. Date commander receives sufficient other information (e.g. Internal unit inquiries, or other information not resulting from formal ROIs). (Typical offenses: Disorderly conduct, disobey order, disrespect, dereliction of duty, fail to go/going from).
5. Date commander learns offender's identity following an "Unknown Suspect" ROI, or the date of No. 1 or No. 4, whichever is later.
6. Date the offender returns to military control (from leave, AWOL, TDY, waived civilian jurisdiction), or the date of Nos. 1-5, whichever is later.
7. If none of the above apply, then use the date of the latest offense.